

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2599

Nelson Kikubira Luswata,

Petitioner,

v.

John Ashcroft, Attorney General of
the United States of America,

Respondent.

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Petition for Review of an
Order of the Board of
Immigration Appeals.

[UNPUBLISHED]

Submitted: May 7, 2004
Filed: May 13, 2004

Before BYE, McMILLIAN, and RILEY, Circuit Judges.

PER CURIAM.

Nelson Luswata, a native and citizen of Uganda, petitions for review of an order of the Board of Immigration Appeals (BIA) denying his motion to reopen removal proceedings. Luswata argues the BIA erred in not following its established standard of review in deciding his motion to reopen, not considering his newly acquired evidence that was unavailable when he appeared before the immigration judge, and not issuing a written decision revealing the rationale for its decision to deny his motion.

After careful consideration, we conclude that the BIA did not abuse its discretion in denying the motion, see 8 C.F.R. § 1003.2(a) (BIA has discretion to reopen), because Luswata had not shown that the new evidence “was not available and could not have been discovered or presented at the [removal] hearing,” 8 C.F.R. § 1003.2(c)(1). See INS v. Abudu, 485 U.S. 94, 107-08 (1988) (motions to reopen deportation proceedings are disfavored because of strong public interest in bringing litigation to close); Raffington v. INS, 340 F.3d 720, 721, 724 (8th Cir. 2003) (standard of review; court reviewing denial of motion to reopen does not have jurisdiction to review underlying order). To the extent Luswata asserts a due process challenge to the BIA’s streamlined-review procedure, the argument is unavailing. Cf. Loulou v. Ashcroft, 354 F.3d 706, 708-09 (8th Cir. 2003) (concluding affirmance without opinion of immigration judge’s decision does not violate alien’s due process rights).

Accordingly, we deny the petition.
